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OFFICE OF PETITIONS

In re Application of
Gregory Wolff
Application No. 10/697,606
Filed: October 29, 2003
Attorney Docket No. 015358-005210US

Decision on Petition

This is a decision on the petition filed June 15, 2005, requesting, in effect, that Figure 1 filed on June 15, 2005, be entered as part of the original disclosure.

The petition is **dismissed**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are NOT permitted.

The application was filed on October 29, 2003. On May 12, 2005, the Office of Initial Patent Examination mailed a "Notice of Omitted Item(s)" stating that the application had been accorded a filing date of October 29, 2003, and advising applicants that Figure 1 appeared to have been omitted.

In response, the present petition was filed. Petitioner alleges Figure 1 was filed with the original application.

All the evidence present in the file has been carefully considered, but is not persuasive that Figure 1 was submitted with the original application.

The last portion of MPEP 513 states,

Where there is a dispute as to the contents of correspondence submitted to the Office (e.g., an applicant asserts that three sheets of drawings were submitted under 37 CFR 1.10 with an application, but the Office records indicate receipt of only two sheets of drawings with the application) ... The Office will rely upon its official record of the contents of such correspondence in absence of convincing evidence (e.g. a postcard receipt

Although a copy of a stamped postcard receipt has been filed, it does not establish Figure 1 was filed with the original application.

The postcard receipt verifies the receipt of "No. of Sheets of Drawings: 6." The postcard receipt verifies the receipt of "6 Sheets Formal Drawings."

Petitioner alleges copies of 6 sheets of drawings from the parent application were filed and 6 sheets of Formal drawings were filed. However, the postcard receipt does not verify receipt of 12 sheets of drawings. If the application contained six sheets of drawings, then the Office would not have marked any portion of the postcard as incorrect. If six sheets were filed, then a postcard stating the number of sheets of drawings was 6 would have been correct. If six sheets of

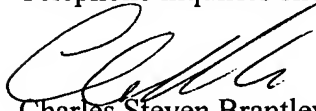
drawings were filed, the Office would have considered the statement that 6 Sheets Formal Drawings were filed to be correct. The Office does not check to see if drawings are informal or formal. MPEP 608.02(b) states, "The Office no longer considers drawings as formal or informal. Drawings are either acceptable or not acceptable." The employee verifying receipt of the items on the postcard would have only verified the presence of six sheets of drawings.

The postcard verifies that six sheets of drawings were filed. The file only includes six sheets of drawings identical to the five sheets of formal drawings filed with the instant petition. Therefore, the evidence establishes the Office lost one drawing sheet but does not establish which of the other drawing sheets was filed but misplaced. For example, the drawing sheet lost may have been an informal version of Figure 2. Petitioner has failed to prove that the formal drawing sheet containing Figure 1 was the drawing sheet lost.

Although the postcard fails to establish Figure 1 was filed with the original application, petitioner still has a remedy available. The application incorporates by reference the contents of the parent application. Petitioner states Figure 1 is present in the parent application. Therefore, petitioner may submit an amendment adding Figure 1. Any such amendment will, of course, be reviewed by the examiner for new matter. See MPEP 608.02(a).

If petitioner does not file an amendment to add Figure 1, or request reconsideration of the instant decision, then petitioner should file an amendment to the specification deleting references to the missing pages should be filed prior to the first USPTO action in order to avoid further delays in the examination of the application.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



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